

EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

DAVID ANNUNZIATO,
on behalf of himself and all others similarly
situated,

Plaintiff, NO. 2 CV-3609

- against-

COLLECTO, INC.,

Defendant.

December 11, 2014

1:00 p.m.

DEPOSITION of JOHN BURNS, held at the
Law Offices of Zeldes, Needle & Cooper, 1000
Lafayette Blvd, Bridgeport, Connecticut, before
Anita T. Shemin, a Licensed Shorthand Reporter
within and for the State of Connecticut.

2

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4 Attorney for The Plaintiff

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7

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9 Attorney for The Plaintiff

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12 BY: BRIAN L. BROMBERG, ESQ.

13

14 ZELDES, NEEDLE & COOPER, P.C.

15 Attorneys for The Defendant.

16 1000 Lafayette Blvd.

17 Bridgeport, Connecticut

18 BY: JONATHAN ELLIOT, ESQ.

19 Also Present:

20 Peter Garland, Esq.

21

22

23

24

25

2 I N D E X

3 Examination By Page

4 Mr. Mauro 4

5

6

7 ***** E X H I B I T S *****

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21 *****Exhibits Retained by Counsel

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23

24

25

1 John Burns

2 (Exhibit one pre marked for

3 identification, as of this date one)

4 J O H N B U R N S

5 , a witness having been sworn to

6 tell the truth was examined and testified as

7 follows:)

8 EXAMINATION BY

9 BY MR. MAURO:

10 Q Good morning, Mr. Burns, thank you for
11 being here today.

12 My name is Joseph Mauro and I
13 represent the plaintiffs in a lawsuit entitled David
14 Annunziato versus Collecto and I am going to ask you
15 some questions at a deposition today.

16 Have you had your deposition taken before?

17 A Yes.

18 Q You understand the general ground rules of
19 a deposition, if you don't understand my question
20 please say so.

21 If you ever need a break, let me
22 know. When I am asking questions, I would ask that
23 you wait until I finish the question so that we
24 don't speak over each other and talk over one
25 another and I will do the same thing.

1 John Burns
2 relative to the account, advising us as to the fact
3 that they have documentation or have a document or
4 have some basis for adding collection costs to his
5 account and that we contractually had that
6 information provided by them and we relied upon the
7 information that they provided to us as a basis for
8 including it in the collection effort.

9 Q So your client told you that this fee
10 could be collected from Mr. Annunizato, correct?

11 A The client advised us with not only Mr.
12 Annunizato, but with others, that collection costs
13 were what they were seeking in addition to the
14 repayment of the amount owed based on the account of
15 the individual.

16 Q And Collecto relied upon that
17 representation of its client in seeking these debt
18 costs, correct?

19 A Yes.

20 Q The client that we are referring to is the
21 New York Institute of Technology, correct?

22 A That is correct.

23 Q I am going to refer to them as New York
24 Tech if that is okay.

25 Other than the representation by New

1 John Burns

2 York Tech that these additional collection costs
3 could be imposed, did Collecto rely upon anything
4 else in their decision to impose these costs on the
5 Plaintiff?

6 MR. ELLIOT: Object to the form. He
7 didn't testify it was their decision.

8 Q You want me to restate the information?

9 A There is information that I have seen
10 which is documentation from New York Tech that it
11 was disclosed to the students and people enrolling
12 in the school that in the event their account was
13 not paid, there would be collection costs added to
14 their account. It was not a document that the
15 school had which was shown to me as being a record
16 or evidence of the fact that a disclosure was made
17 to the consumer about collection costs being added
18 to the account if it was unpaid.

19 Q And did Collecto have that document that
20 you are referring to before they sought to collect
21 this collection cost?

22 A I don't know when we received the
23 document. I know it is not uncommon for the
24 marketing person in assigning new clients to ask for
25 new information such as that. We have a lot of

1 John Burns

2 education clients, I am not certain about each
3 individual account.

4 Q And this document that you are referring
5 to, what was it, do you remember the name of this
6 document?

7 A I think it was part of the student
8 handbook.

9 Q Okay.

10 And that student handbook, did it
11 refer to any specific percentage that can be
12 collected as a collection cost?

13 A No, it didn't.

14 Q Do you know of any documents that indicate
15 that any of the consumers who Collecto was
16 attempting to collect for on behalf of New York
17 Tech, agreed to pay over 40 percent of their
18 principal balance as a collection cost?

19 A I don't think there was any discussion of
20 the rate with the student, with the creditor.

21 Q Is that a no to that?

22 A Once you --

23 MR. ELLIOT: Object to the form.

24 Q Are you aware of any document that you
25 have seen that indicates that any consumer who

1 John Burns

2 attended New York Tech agreed with New York Tech
3 that the consumer would pay over 40 percent of their
4 principal as a collection cost if their principal
5 was not paid?

6 A No.

7 MR. MAURO: Would you mark that.

8 (Exhibit 2 marked for
9 identification, as of this date)

10 Q Mr. Burns, I have placed in front of you
11 what has been marked as Plaintiff's Exhibit two.
12 Have you seen that document before?

13 A Yes, I have.

14 Q What is the document?

15 A It appears to be a copy of the collection
16 letter that was sent to the consumer from my office.

17 Q The consumer being David Annunziato,
18 correct?

19 A Yes.

20 Q Do you see up top on the right where it
21 says, principal 3,229.50?

22 MR. ELLIOT: Object to the form.

23 A Yes.

24 Q Do you see on the top right where there is
25 a reference to principal.

1 John Burns

2 A Where it says, client authorizes
3 collection costs to be added to the accounts and
4 they answered, yes. When it said, if yes, how will
5 the costs be added, and they checked off the block,
6 use the make whole method of assessing collection
7 charges to debtor's account to make sure that the
8 college receives 100 percent of the amount due
9 returned.

10 Above that is the statement relative
11 to them directing us saying that they are asking
12 that we seek recovery of the collection charges and
13 that further statements as part of their
14 representation.

15 Q Let me call your attention back to
16 Plaintiff's Exhibit No. 2 which is the collection
17 letter, it should be in front of you there.

18 Under the agreement that New York
19 Tech and Collecto had on May 16th, 2012, what is the
20 maximum amount of money that Collecto could receive
21 for the collection of David Annunziato's debt?

22 A The fee rate was 30 percent.

23 Q It would be 30 percent of what number?

24 A Of the gross amount total due.

25 Q Yes?

1 John Burns

2 A 4,609.29.

3 Q Do you know of any document where Mr.
4 Annunizato agreed to that fee structure?

5 A I don't know of any document.

6 Q Have you ever seen such a document?

7 A The one that I have never seen, the one
8 that I don't know about?

9 Q Have you ever seen such a document?

10 A The one that I don't know about? No.

11 Q Have you ever seen such a document where
12 any student of New York Tech has agreed to that fee
13 structure between Collecto and New York Tech?

14 A Well, I don't think any student would
15 agree to it. They are not party to the contract.

16 Q To your knowledge, has any student of New
17 York Tech ever agreed to pay?

18 MR. ELLIOT: Objection to form. This is
19 clearly outside of the scope of his knowledge.
20 That is a matter between New York Tech and
21 their students, he hasn't seen every document
22 with every student.

23 MR. MAURO: John, let the witness testify,
24 please.

25 Q Have you ever seen any document where any

1 John Burns

2 identification, as of this date)

3 Q I have placed in front of you what has
4 been marked as Plaintiff's Exhibit eight. Do you
5 want to look through that for a couple of minutes?

6 A Okay.

7 Q Have you seen this document before?

8 A I don't believe so.

9 Q Do you know what that document is?

10 A I can make a guess, but I think you are
11 trying to identify a class of consumers that would
12 be in similar circumstances as Mr. Annunizato and I
13 believe this is a summary that was prepared with
14 individuals who were formerly students at New York
15 Tech that might fit that criteria.

16 Q For the record, that is Bates stamped
17 Annunziato production 00041 through Annunziato
18 production 00072. I will represent that this
19 document was produced by your counsel during the
20 course of this litigation.

21 Calling your attention to the first
22 page to the first two columns, is it fair to say
23 that those two columns indicate the name of students
24 at New York Tech that Collecto sought to collect
25 debts from?

1 John Burns

2 A I don't have any direct knowledge of that
3 so I can only -- I have seen this document in its
4 entirety for the first time. I know information was
5 provided, but I did not participate in the
6 collection of it so for me to comment on what it is
7 is really difficult for me to do because I can't say
8 anything with any degree of surety that it is
9 accurate.

10 MR. MAURO: Off the record.

11 (Discussion Off The Record)

12 MR. MAURO: Can you mark this.

13 (Exhibit 9 marked for
14 identification, as of this date)

15 Q Mr. Burns, calling your attention back to
16 Plaintiff's Exhibit eight. Is it fair to say that
17 that contains a list of 464 former students of New
18 York Tech that Collecto sought to collect money
19 from?

20 A Yes.

21 Q And the first two columns contain the
22 names of those students, correct?

23 A Yes.

24 Q And then the last column on the first
25 page, where it -- you see where it says principal?

1 John Burns

2 A Yes.

3 Q And the amount contained in that column is
4 the principal amount of the debt that New York Tech
5 attempted to collect from the 464 students, correct?

6 A Yes.

7 Q If I call your attention to page 17 of
8 that document, you will see that there is another
9 column called, original coll cost bal. Do you see
10 that column, Mr. Burns?

11 A Yes.

12 Q Is it fair to say that that is the
13 collection cost that Collecto sought to collect from
14 each of these consumers, former students of New York
15 Tech?

16 A It would appear so.

17 Q Do you have any reason to believe it is
18 not?

19 A No.

20 Q Is it fair to say that the first amount
21 that appears on page 17 identified as \$169.29
22 applies to the first student that appears on page
23 one of the Exhibit?

24 MR. ELLIOT: That may be asking him more
25 than --

1 John Burns

2 will try to wrap it.

3 MR. ELLIOT: All right.

4 (Brief Recess)

5 Q So calling your attention back to
6 Plaintiff's Exhibit No. eight, is it fair to say
7 that the second to the last column appearing on the
8 first page is a client number, do you see that.

9 A Yes.

10 Q Is that what you were referring to a few
11 moments ago when you said that there were different
12 clients in --

13 A It is New York Tech, but there are
14 different categories of debt that they are giving
15 us.

16 Q Are the different categories of debt that
17 they were giving is that what the different client
18 numbers refer to?

19 A The client numbers refer to the -- the NYT
20 101 refers to the account, the Perkins loan, that is
21 where the difference in the fee rates may be, the
22 federal government establishes what the rates would
23 be.

24 Q And the NYT 100, do you know what that
25 refers to?

1 John Burns

2 A I am not certain.

3 Q What other categories of debt did you
4 collect for New York Tech?

5 A There were Perkins loans, tuition
6 accounts, normally anything else that would be on
7 the student account, enrollment fees, or other fees
8 that were charged by the school, whether it is
9 bookstore, it could be something totally unrelated
10 to the actual tuition part of it.

11 Q Would New York Tech refer to those by a
12 different client number?

13 A It could be client number, if there are
14 distinctions of what is being collected, the Perkins
15 loans have a rate structure different from the
16 tuition loans, they would put a different client
17 number on them so it would be applied appropriately
18 to the right account.

19 Q The contract that we looked at,
20 Plaintiff's Exhibit five, does that govern tuition
21 accounts only?

22 A This governs any accounts that they place
23 with us.

24 Q Is it fair to say that the collection fees
25 that were being charged for tuition accounts were

1 John Burns

2 based upon that collection agreement, Plaintiff's
3 Exhibit five?

4 A I believe that would be a correct
5 statement.

6 Q But other accounts, for instance, Perkins,
7 the collection fees would be calculated based on
8 something other than that contract, correct?

9 A Well, if it is Perkins, it is federal
10 parameters in the Perkins program and they would
11 follow whatever the Perkins program requires.

12 Q You would not then base the collection fee
13 upon Plaintiff's Exhibit five, the contract,
14 correct?

15 A I believe so, yes.

16 Q With the exception of Perkins loans, are
17 there any other situations where the collection fee
18 would not be based upon Plaintiff's Exhibit five,
19 but would be based upon some other calculations?

20 A I can't answer. There are Stafford loans,
21 other loan programs, there is a section in this
22 Exhibit seven that talks about all of the various
23 loan types.

24 If we -- we were engaged to provide
25 collection work for them and gave them a generic

1 John Burns

2 (Exhibits 11 and 12 marked for
3 identification, as of this date)

4 Q Mr. Burns, I have placed in front of you
5 what has been marked as Plaintiff's Exhibit No. 11,
6 do you see that document?

7 A Yes.

8 Q Could you tell me what that is?

9 A It is a copy of the audited financial
10 reports done by the accounting firm of BDO.

11 Q Is that BDO Sideman (sic)?

12 A It used to be, so they have shortened the
13 name as many companies have.

14 Q How was this document created?

15 A The auditors come in and verify the
16 information at our site of business and do a final
17 report based on their findings.

18 Q Is the information originally compiled by
19 Collecto and just approved by BDO?

20 A Yes. They will test everything. If there
21 is any difference in any of their calculations, they
22 would recommend adjustments that could be made.

23 Q Does Collecto work hand-in-hand with BDO
24 in the creation of this documents?

25 A We have to provide them with all of the

1 John Burns

2 data, yes.

3 Q Is there anything in this document, any
4 line items that you feel to be inaccurate?

5 A No, I think it is all pretty much says
6 what it is.

7 Q Do you have any reason to doubt any of the
8 information contained in Plaintiff's Exhibit 11?

9 A No.

10 Q Is this a fair and accurate depiction of
11 the financial condition of Collecto for the years
12 ended February 28, 2004 (sic) and 2013.

13 MR. ELLIOT: Objection, form.

14 A This is the report that was produced so
15 the answer is, yes.

16 Q The information contained in there is
17 based upon the information compiled by Collecto for
18 BDO to audit?

19 A Correct.

20 Q It was done during the course of
21 Collecto's business?

22 A Yes.

23 Q And this document, Plaintiff's Exhibit 11
24 is the most recent financial statement of Collecto,
25 correct?

1 John Burns

2 A The most recent audited financial
3 statement is what this represents.

4 Q Is there a more recent unaudited financial
5 statement?

6 A Yes.

7 Q Okay.

8 How often does Collecto create
9 financial statements?

10 A Every month.

11 Q Does it contain a balance sheet?

12 A The interim unaudited financial statements
13 do contain a balance sheet.

14 Q Is it fair to say that Collecto
15 continuously and routinely creates a financial
16 statement of the company?

17 A I hope so.

18 Q And that it is only once a year that
19 Collecto calls upon BDO to audit those financial
20 statements?

21 A That is correct.

22 Q This is done everything year in the
23 regular course of business, correct?

24 A That is correct.

25 Q For what reason does Collecto create the

1 John Burns

2 financial statements?

3 MR. ELLIOT: Objection to form.

4 A For what reason?

5 Q Yes, sir?

6 A The measure of how a company is doing is
7 in its financial reports. So the ownership wants to
8 know how is my investment going, how is it handled.
9 Presumably any owner of a business would want to
10 know what their income is, what their assets are,
11 what their liabilities are.

12 Q Does Collecto use the financial statement
13 for any other purpose than to inform its owner about
14 the value of the company?

15 A Well, there are other -- there are clients
16 that want to see the financial information on the
17 company to make sure that we are financially capable
18 of handling their business, that is part of client
19 presentations. We have banks, lenders that we may
20 interact with or leasing companies that we are going
21 to lease from, or office space, there are numerous
22 applications where people want to know what your
23 financial story is.

24 Q Insurance?

25 A We have bonding companies, we are required

1 John Burns

2 to provide audited reports every year for the
3 bonding companies.

4 Q On the first page of Plaintiff's Exhibit
5 11, is it fair to say that it states that this
6 financial statement is for a company called EOS
7 Holdings USA, Inc. and Subsidiary, correct?

8 A That is correct.

9 Q Who owns EOS Holdings USA, is it the
10 company called EOS International and then a word
11 after that that begins with B?

12 A Yes. That is a German company based in
13 Hamburg.

14 Q For the purposes of?

15 A We usually identify them as EOS
16 International.

17 Q For the purposes of this deposition, we
18 will not attempt to pronounce that word, instead I
19 will refer to them as EOS International, is that
20 okay?

21 A Yes.

22 Q Who is the owner of EOS Holdings USA,
23 Inc.?

24 A EOS International.

25 Q Does EOS Holdings USA, Inc. hold Collecto,

1 John Burns

2 Inc.?

3 A Yes. EOS Holding is the company that owns
4 all of the assets of -- in the corporation, Collecto
5 and all of the other subsidiaries are all owned by
6 the same entities. Our trade name is EOCCA, Collecto
7 does business as EOS so EOS is the entity that it is
8 all rolls up to.

9 Q So there is a corporation called EOS
10 Holdings USA, Inc., correct?

11 A Right.

12 Q And that owns a corporation called
13 Collecto, Inc., correct?

14 A As well as others, yes, other companies.

15 Q What other companies besides Collecto,
16 Inc. does EOS Holdings USA, Inc. hold?

17 A Well, any -- True North, California
18 Service Bureau, Pace Financial Services, ACA
19 Healthcare Receivables, Afford- A- Care, Inc. There
20 are several entities, mostly through acquisitions
21 that were made by EOS Holdings. They made
22 acquisitions, made the acquisition of Collecto, so
23 to speak, but all of the other entities are all
24 separate corporations that are all part of the
25 consolidated entity.

1 John Burns

2 Q Let me get this clear in my mind.

3 You have the holding company called
4 EOS Holdings, USA, Inc. that owns Collecto, Inc.,
5 correct?

6 A Yes.

7 Q And now Collecto, Inc. owns that list of
8 other entities that you just described, correct?

9 A In some cases some of those entities might
10 be owned by another subsidiary. When we bought
11 certain companies, they had their own subsidiaries
12 and it all rolls up to EOS Holdings.

13 Q Do any of those other subsidiaries not
14 fall under the ownership of Collecto?

15 A Not in this financial statement, no.

16 Q I am talking about outside of this
17 financial statement?

18 A Yes.

19 Q What I am talking about is, I will reask
20 the question.

21 You have identified a host of other
22 companies moments ago, do you remember that?

23 A Yes.

24 Q Are all of those companies owned by
25 Collecto?

1 John Burns

2 A Again, Collecto owns True North, True
3 North, owns Pace Financial, so indirectly, they all
4 pyramid up to EOS Holdings, but who owns what is --
5 you know, so when you say that, it isn't totally
6 accurate.

7 Q When they are pyramiding up to EOS
8 Holdings, do they pyramid through Collecto?

9 MR. ELLIOT: Objection to form.

10 A Those that appear in this financial
11 statement, yes.

12 Q Irrespective of this financial statement,
13 are there any of the companies that you just listed
14 that are not owned in some way by Collecto?

15 MR. ELLIOT: Objection to form.

16 A There are some companies that are managed,
17 but are not part of the financial entity EOS
18 Holdings, USA.

19 So the company provides management
20 services for some of the other companies, they are
21 owned directly by EOS International.

22 Q These other companies that we are talking
23 about are they all corporations?

24 A Yes.

25 Q Those corporations, does Collecto, Inc.

1 John Burns

2 have an interest in each one of those other
3 corporations?

4 A No, not financial interest, no.

5 Q Okay.

6 Is there some other interest in those
7 companies?

8 A We provide management services. The
9 company bought an organization in Brazil and it is
10 managed by a director who is on the board of
11 directors of Collecto. None of the financial
12 information, none of the results come through this
13 entity, they are all direct to Germany.

14 The company bought a few years ago a
15 company in Canada that is EOS Canada, and that is
16 owned directly by the parent company and managed by
17 us being EOS, you know, CCA, they manage the
18 Canadian company we don't own it, it is owned by the
19 parent company inc Germany.

20 Q Does EOS Holding USA, Inc. collect debts?

21 A No, not that company directly. All of the
22 debt collection is done by Collecto, EOS, whatever
23 the licensed name is in whatever jurisdiction.

24 Q Does EOS Holdings USA do any business
25 whatsoever?

1 John Burns

2 A Direct business?

3 Q Yes, sir.

4 A Other than buying Collecto and overseeing
5 Collecto and its subsidiaries, they don't do direct
6 business.

7 Q So they are a holding company?

8 A Yes. That is the entity that files the
9 tax returns, this is the entity that -- where
10 everything is consolidated.

11 Q Does EOS Holdings USA have any employees?

12 A Not separately. I mean, there is a board
13 of directors which is has four or five German
14 representatives and a representative from the U.S.,
15 but I don't classify them as employees. I don't
16 know, but I think their compensation comes from the
17 parent company in Germany.

18 Q The board of directors of ESO USA is that
19 a different board than Collecto?

20 A There are some differences.

21 Q They are separate corporations, correct?

22 A Yes.

23 Q And are there minutes taken at corporate
24 meetings for Collecto, Inc.?

25 A Yes, I assume so.

1 John Burns

2 Q Are there minutes kept at corporate
3 meetings of EOS USA?

4 A I don't know if they have separate
5 minutes, I have not seen them.

6 Q It is a different board of directors
7 between EOS Holdings USA and Collecto, correct?

8 A Well, I think there is one difference
9 between. There may be some people in the EOS board
10 that are not on Collecto and there may be somebody
11 who is on Collecto that is not on the other board,
12 there may be one or two differences.

13 Q I think you said that there were four
14 German members of the EOS Holdings USA?

15 A The CEO, there are two U.S. people who are
16 on the Collecto board. There are board of directors
17 for the other entities also and that can vary and
18 the directors of EOS Holdings is a certain board,
19 and then the parent company has a different board of
20 directors, some of which may be the same people, but
21 they are all individual entities.

22 Q They are individual entities with
23 different boards, correct?

24 A Yes.

25 Q Some people may overlap, correct?

1 John Burns

2 A Yes.

3 Q Some are on other boards, correct?

4 A Yes.

5 Q Generally speaking, they are comprised of
6 different people?

7 A There are no two entities that have the
8 same board entirely, I believe.

9 Q Does Collecto, Inc. hold regular board
10 meetings?

11 A Yes.

12 Q And does EOS Holdings USA hold regular
13 board meetings?

14 A Yes.

15 Q Do you know what the phrase net worth
16 means in terms of financial statements?

17 A Yes, I have an understanding of that.

18 Q What is your understanding as to what the
19 phrase net worth means in the context of a company?

20 MR. ELLIOT: Object to the form.

21 A The net worth is normally the assets minus
22 the liabilities of the corporation, and you have got
23 various types of net worth, so it can be a book net
24 worth, it can be a regulatory net worth where
25 calculations are done which excludes certain assets.

1 John Burns

2 It could be liquidation net worth. There are
3 different categories of net worth when one is doing
4 a financial report.

5 Q What category of net worth would be
6 reflected in Plaintiff's Exhibit No. 11?

7 A U.S. GAAP net worth.

8 Q Is that book value net worth?

9 A Book value is just another term. Book
10 value usually relates to certain assets.

11 Q Correct me if I am wrong, I think you said
12 that Plaintiff's Exhibit 11 was created using the
13 U.S. GAAP standard, right?

14 A Yes.

15 Q Does GAAP stand for?

16 A Generally accepted --

17 Q Generally accepted accounting principals?

18 A Yes.

19 Q Calling your attention to page 25 of
20 Plaintiff's Exhibit 11?

21 A Yes.

22 Q What is that document?

23 A It is a summary document showing the
24 intercompany adjustments to get to the consolidated
25 financial numbers.

1 John Burns

2 Q Is it fair to say that that is a
3 consolidated balance sheet?

4 A I think that is what it is called, yes.

5 Q Is it fair to say that on that page you
6 have four different columns of information?

7 A Yes, yes.

8 Q And the second column relates to the
9 information as it pertains to the corporate entity
10 Collecto, Inc., correct?

11 A Yes.

12 Q Looking just at that column of
13 information, Collecto, Inc., can you tell me what
14 the total assets are for Collecto, Inc. reflected on
15 this balance sheet is?

16 A 84,959,306.

17 Q Can you tell me what the liabilities of
18 Collecto, Inc. are?

19 A 19,278,862.

20 Q All right.

21 And what is the total equity of
22 Collecto, Inc as reflected on this balance sheet?

23 A 65,680,444.

24 Q Are you familiar with the phrase goodwill?

25 A Yes, I am.

1 John Burns

2 Q What does goodwill mean?

3 A Goodwill means that it is an asset that is
4 based on some assumed value for an asset that was
5 acquired, it is not tangible, there is no -- it is
6 just the value placed on an asset that was achieved
7 by the corporation.

8 Q There is a goodwill number appearing in
9 Plaintiff's Exhibit 11, correct?

10 A Yes.

11 Q What is that number?

12 A The goodwill is 32,706,493.

13 Q Do you know how that number was comprised?

14 A I believe it is in the further detail of
15 the financial report, but basically when a
16 corporation was acquired by EOS Holding, there were
17 values set on specific assets of the corporation,
18 and any amount of money that was paid above what the
19 hard value of those assets would be deemed to be
20 goodwill.

21 So if we bought receivables, bought
22 office equipment, bought any tangible item and after
23 you deducted that part from the total purchase
24 price, you arrive at a number that was assigned or
25 identified as goodwill.

1 John Burns

2 Q Is that number compiled as a result of
3 some business combinations?

4 A Yes, yes. When an acquisition is made,
5 anything that cannot be identified as a hard asset
6 is assumed to be goodwill. You are paying for
7 something beyond the book value.

8 Q And the generally accepted accounting
9 principals would require that that goodwill figure
10 that is the result of a business combination be
11 reflected on a balance sheet, right?

12 MR. ELLIOT: Objection to form.

13 MR. MAURO: I will rephrase the question.

14 Q What is your understanding about when the
15 generally accepted accounting principals require the
16 reporting of goodwill on a balance sheet?

17 MR. ELLIOT: Objection.

18 A If there is an acquisition of assets, it
19 is a calculation that is done once the breakdown of
20 the purchase is booked in the book value of the
21 corporation.

22 MR. MAURO: Can you mark that as the next
23 Exhibit.

24 (Exhibit 13 marked for
25 identification, as of this date)

1 John Burns

2 Q I have placed in front of you what has
3 been marked as Plaintiff's Exhibit 13.

4 A Yes.

5 Q Have you seen this document before?

6 A Yes, I have.

7 Q On page two, do you see a signature line?

8 A Yes.

9 Q Is it your signature on there?

10 A No.

11 Q I am sorry, page three?

12 A Yes.

13 Q Did you sign that document, sir?

14 A Yes.

15 Q Did you read it before you signed it?

16 A I did, yes.

17 Q Okay.

18 I call your attention to the answer
19 that is given to interrogatory No. 1. Is that an
20 accurate representation of how goodwill was compiled
21 for the sake of this balance sheet, Plaintiff's
22 Exhibit 11?

23 A The figure that is in the interrogatory is
24 the same figure that is on the balance sheet.

25 Q And is the explanation as to how that

1 John Burns

2 figure was compiled in line with your understanding
3 of goodwill here in this balance sheet?

4 A I believe it is, yes.

5 Q That interrogatory applied if you can see
6 to Plaintiff's Exhibit No. 12 which is a previous
7 years balance sheet, financial statement, do you see
8 that, sir?

9 A What is your question?

10 MR. MAURO: I will reask the question.

11 Q Let me call your attention to Plaintiff's
12 Exhibit No. 12 page 29.

13 Before we do that, what is
14 Plaintiff's Exhibit No. 12?

15 A It is a copy of the audited financial
16 statements of EOS for the years 2012, 2011.

17 Q This financial statement was created the
18 same way that the Plaintiff's Exhibit 11 was
19 created, correct?

20 A That is correct.

21 Q And for the same purposes, correct?

22 A Yes.

23 Q Calling your attention to Page 29 of
24 Plaintiff's Exhibit 12, you will see that the column
25 -- the figure for goodwill as contained in the

1 John Burns

2 Collecto column is 32,706,493, correct?

3 A Correct.

4 Q That is the same goodwill figure that
5 appears on the about the sheet contained within
6 Plaintiff's Exhibit 11, correct?

7 A Correct.

8 Q And the interrogatory request that is
9 contained within Plaintiff's Exhibit 13 is actually
10 referring to the goodwill figure that applies to
11 Plaintiff's Exhibit No. 12, do you see that, sir?

12 A Yes.

13 Q Okay.

14 Is it your understanding that that
15 goodwill figure of 32,706,493 has been consistent
16 over the last five years?

17 A I don't know how long the last entry that
18 would have effected that was the purchase of the
19 company known as True North, and I think that was
20 less than five years ago.

21 Q Okay.

22 Is it fair to say that that goodwill
23 figure has not changed since the creation of
24 Plaintiff's Exhibit No. 12?

25 A Not yet.

1 John Burns

2 We have a group that does medical
3 billing, we have a group that does as I say client
4 service work, so when you refer to Collecto, you are
5 referring to a lot of different businesses that all
6 do work related to accounts receivable and not
7 purely collection work on specifically delinquent
8 accounts.

9 Q With respect only to the folks contained
10 within Plaintiff's Exhibit No. 8, they were all
11 former students of New York Tech, correct?

12 A I would assume so.

13 Q With respect to those students, is it fair
14 to say that the collection methods used were the
15 standard methods of Collecto that you identified
16 moments ago?

17 MR. ELLIOT: Objection to form.

18 A Yes.

19 Q So letters and phone calls, correct?

20 A Those are the two main areas of focus.

21 Q We identified earlier that there were
22 different percentages that were applied to different
23 students contained within Plaintiff's Exhibit eight,
24 correct?

25 A Yes.

1 John Burns

2 Q Okay.

3 Did the percentages that were applied
4 to those students bear any relationship to the
5 actual cost of collecting from those students?

6 A No, it didn't cover the cost of collecting
7 from those students. percentages.

8 Q Did the amount of costs that Collecto was
9 attempting to collect from these students for
10 collection costs bear any relationship to the actual
11 cost of collection that either you or New York Tech
12 incurred?

13 MR. ELLIOT: Objection.

14 A Could you define what the actual costs of
15 collection is?

16 Q What I am referring to by that phrase is
17 the actual out of pocket money that it costs either
18 you or New York Tech to collect that debt so using
19 that definition?

20 MR. ELLIOT: Objection to form. If you
21 can make sense of it, you can answer.

22 Q Using that definition that you just asked
23 me for, using the definition, sir, that you just
24 asked me for that I relayed to you, do you know
25 whether the amount of money that you attempted to

1 John Burns

2 collect from the students contained within
3 Plaintiff's Exhibit eight for collection costs bears
4 any relationship to the actual cost of collection of
5 Collecto or New York Tech?

6 A No.

7 MR. ELLIOT: Objection to form. You can
8 answer.

9 A I would assume that the actual collection
10 costs that we incurred to collect those moneys was
11 probably higher than the amount of money we
12 collected.

13 Q Let's take a look at Plaintiff's Exhibit
14 No. 2 which is the collection letter that you sent
15 to Dave Annunziato, do you see that document, sir?

16 A I saw it previously when you had it out.

17 Q Thank you.

18 Is it fair to say that the collection
19 cost that Collecto was attempting to collect from
20 Dave Annunziato was 1,382.79?

21 A That is the amount that the client
22 anticipated paying us for a successful collection of
23 the account.

24 Q And what --

25 A So we represent on the letter what the

1 John Burns

2 amount is that the client has directed us to charge
3 for purposes of covering the cost of the collection.

4 Q I understand if your testimony moments ago
5 that you would assume that the cost of collecting
6 that debt from Dave Annunziato was higher than the
7 1,382,79, correct?

8 MR. ELLIOT: Objection to form.

9 A The problem is you have not identified
10 what is included in collection costs. Does it
11 include the rents that we pay, does it include the
12 utilities we pay, does it include the cost of the
13 staff, does it include the cost of the receptionist,
14 does it include the marketing department, the
15 cleaning people that come in and clean the office
16 are all of those costs part of the collection?

17 Q Do you believe that a consumer should pay
18 those costs for a collection agency?

19 A I think a --

20 MR. ELLIOT: Objection.

21 A I think the consumer should pay the bill
22 if it is a legitimate bill, I think they should pay
23 the bill.

24 Q When you seek collection costs, when you
25 sought collection costs of 1,382.79 from Dave